

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 12, 2022

Dana Ayers, Director  
Community Development Department  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Dear Dana Ayers:

**RE: City of Clayton's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element**

Thank you for submitting the City of Clayton's (City) draft housing element received for review on July 14, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on October 7, 2022 with you and your consultants Reina Schwartz and Laura Stetson. In addition, HCD considered comments from East Bay For Everyone, East Bay YIMBY, Greenbelt Alliance, YIMBY Law, South Bay YIMBY pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to accommodate the regional housing needs allocation, including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jamillah Williams, of our staff, at [Jamillah.Williams@hcd.ca.gov](mailto:Jamillah.Williams@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF CLAYTON

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Housing Needs, Resources, and Constraints**

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

**Enforcement:** While the element includes analysis of fair housing complaints, it must describe the City's compliance with existing fair housing laws and regulations. For additional information, please see pages 28-30 on HCD's AFFH Guidance Memo at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

**Regional Analysis:** While the element analyzed components of the fair housing assessment and compared the City to neighboring and similar communities (i.e., Walnut Creek, Concord, Pleasant Hill), the element must analyze the City compared to the broader region and with nearby communities such as Unincorporated Contra Costa County (Bay Point), Antioch, and Pittsburg, and evaluate the disparities and differences in income, race, disparities in access to opportunity and other relevant components from the assessment of fair housing. Additionally, the element should supplement this analysis with local data and knowledge and other relevant factors (noted in the finding below). Based on a complete analysis, the element must formulate meaningful actions and programs in response to the analysis.

**Racially Concentrated Areas of Affluence (RCAA):** The element includes some general analysis about whether parts of the City are considered an RCAA. However, HCD's fair housing data viewer indicates that the entire City is considered an RCAA. The analysis should include updated data regarding the City's RCAA designations and as noted above this should be analyzed relative to the broader region, county, and neighboring communities including the City's eastern neighbors. For more information, please visit: <https://affh-data-resources-cahcd.hub.arcgis.com>.

**Disparities in Access to Opportunity:** While the element identifies and describes local and regional patterns and trends in disparities in access to opportunity for education, transit, economic, and environmental quality, it also must analyze disparities in access to opportunities for persons with disabilities. A complete analysis should include the

locally and regional disparities of the educational, environmental, and economic scores through local, federal, and/or state data and conclude with a summary of issues.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element must include an analysis demonstrating whether sites identified to accommodate the regional housing need allocation (RHNA) are distributed throughout the community in a manner that AFFH. In the analysis, the element concludes that the distribution of sites improves fair housing conditions because of identification of sites in high-resource areas. However, the element should discuss the location and magnitude of impact to evaluate AFFH. A full analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that effects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity). The element should also discuss any isolation of the RHNA by income group and whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to mitigate this (e.g., anti-displacement strategies).

Local Data and Knowledge and Other Relevant Factors: As noted in the prior finding, the element must supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional advocates, public comments, and service providers. Additionally, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Contributing Factors to Fair Housing Issues: The element includes contributing factors to fair housing issues but should re-evaluate and prioritize these factors based on a complete analysis to better respond to the fair housing issues.

Goals, Priorities, Metrics, and Milestones: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Currently, the element identifies program(s) to encourage and promote affordable housing; however, most of these programs do not appear to facilitate any meaningful change nor address AFFH requirements. Furthermore, the element must include quantifiable metrics and milestones for evaluating progress on programs, actions, and fair housing results. Programs must generally address enhancing housing mobility, increasing housing opportunities in high resourced areas, place-based strategies for community revitalization, and addressing displacement risks. Programs also need to be based on identified contributing factors, be significant and meaningful. The element must add, and revise programs based on a complete analysis and listing and prioritization of contributing factors to fair housing issues.

For your information, while the element still needs to include a complete analysis, based on the current information, relative to the City's eastern neighbors and the broader County and region, the City is considered a higher resourced, higher-income, and racially homogenous (majority white population) community. As such, the element

should focus on strong programs and actions that enhance housing mobility and encourage development of more housing choices and affordable housing in an inclusive manner.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress in Meeting the RHNA: The element identified 109 units that have been approved, entitled or under construction for lower and moderate-income households. Specifically, the element includes “The Olivia Project” to accommodate seven lower-income RHNA units. However, the element must demonstrate the affordability of this project through actual or anticipated rents or sales prices or other mechanism ensuring affordability such as inclusionary requirements or deed restrictions.

Availability of Zoning: HCD understands that zoning for multifamily parcels (M-R-M and M-R-H) is inconsistent or does not have a corresponding General Plan land use designation. The City acknowledges that these inconsistencies require projects to apply for a general plan text amendment and a rezone request to implement the appropriate zoning and densities. While the element includes a program to address this inconsistency, for your information, for sites expected to accommodate the City's lower-income RHNA, if zoning is not in place by the beginning of the planning period (January 31, 2023), the element must include a program committing to adopting zoning changes and comply with requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Realistic Capacity: While the element provides assumptions of buildout for sites included in the inventory, it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction. For example, the City surveyed recently approved projects as a part of its methodology, but the element should identify and describe each of those projects to support residential capacity assumptions. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/analysis-of-sites-and-zoning>.

Additionally, the inventory lists a number of sites in nonresidential zones. For sites with zoning that allows 100 percent nonresidential uses (e.g., commercial and mixed-use zones), the calculation of residential capacity must account for the likelihood of 100 percent nonresidential uses. The analysis should be based on factors such as development trends including nonresidential, performance standards requiring residential uses or other relevant factors such as enhanced policies and programs. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly.

Nonvacant Sites: The element must demonstrate the potential for redevelopment on nonvacant sites. To address this requirement, the element notes some general criteria utilized for some but not all the identified nonvacant sites. For example, for some sites, the element notes where there is owner/developer interest. Additionally, the element includes a statement that sites have been chosen due to their location, existing uses, and potential for intensification. This statement should be supported by analysis. First, the element must clearly state the methodology used for identifying nonvacant sites, including describing all criteria. Second, to facilitate an analysis of redevelopment potential, the element should reflect the criteria in the actual sites inventory. For example, the element can list the various criteria utilized on a site-by-site basis. Third, the element must support the validity of the criteria, utilize other criteria, or remove sites if appropriate. For example, the element can discuss previous sites that shared similar characteristics to the methodology and were redeveloped in multifamily housing.

Further, the element must analyze the extent that existing uses may impede additional residential development. The element also indicates that some sites are partially vacant including Sites T, N, and F. For your information, if a site has an existing use, it is considered nonvacant. This information must be reconciled in the element and sites inventory. To analyze the extent the existing use may impede additional residential development, the element can summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified.

In addition, based on the sites inventory, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Finally, if the element utilizes sites with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy must meet the requirements set forth in Government Code section 65915, subdivision (c) (3).

Small Sites: Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or unless the element describes other evidence demonstrating the suitability of these sites. The element is assuming lot consolidation for several smaller sites to accommodate a range of income levels including lower-income households. While the element mentions lot consolidation to facilitate development on these sites, it must

include an analysis to support this assumption. For example, the element must describe circumstances or criteria used to identify sites suitable for lot consolidation such as common ownership; the City's role or track record in facilitating small-lot consolidation; policies or incentives offered or proposed to encourage and facilitate lot consolidation; specific examples of projects that were built for lower-income households on similarly sized sites, densities and affordability and relate those examples back to the sites inventory. Based on a complete analysis, the City should consider adding or revising programs to include incentives for facilitating development on small sites.

Previously Identified Nonvacant and Vacant Sites: Nonvacant sites identified in the prior planning period or vacant sites identified in two or more consecutive planning periods are inadequate to accommodate housing for lower-income households unless the element includes a program that requires rezoning within one or three years (whichever is applicable) of the beginning of the planning period to allow residential use at appropriate densities by right for housing developments in which at least 20 percent of the units are affordable to lower-income households. (Gov. Code, § 65583.2, subd. (c).) While the element cites the government code related to sites identified in the previous planning period, it must clearly indicate which sites were identified in previous planning periods and include a program as appropriate.

Zoning for Lower-Income Households: Pursuant to Section 65583.2(c)(3)(A) and (B), the element must identify sites with zoning and densities appropriate to accommodate the development of housing for lower-income households based on factors such as market demand, financial feasibility and development experience within zones. For communities with densities that meet specific standards (at least 20 units per acre for Clayton), this analysis is not required (Section 65583.2(c)(3)(B)). The element identifies Site B (Silver Oaks) in the inventory to accommodate a portion of the City's lower-income RNHA; however the allowable density is five units per acre. A density of five units per acre will not be found appropriate to accommodate housing for lower-income households. The element must either remove the site from accommodating the lower-income RHNA or add a program to rezone the site at appropriate densities.

Accessory Dwelling Units (ADU): The element is projecting 32 ADUs for an average of 4 ADUs per year over the eight-year planning period to accommodate a portion of its RHNA. The projections are based off ADU building permit trends. Specifically, the element states that the City permitted 7 ADUs over the last four years averaging roughly 2 ADUs per year. However, HCD's records indicate that the City did not report ADU data for 2018 and 2019 and reported 3 ADUs in 2020 and 2 in 2021, averaging no more than 2 ADUs per year. First, to utilize past ADU permit data, the City must submit Annual Progress Reports for 2018 and 2019. Second, the City's past performance on permitting ADUs do not support a two-fold increase. The element must reconcile these figures and adjust assumptions based on a realistic estimate of the potential for ADUs and include strong policies that commit to incentivizing ADUs. Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the course of the planning period and implement additional actions if not meeting target numbers anticipated in the housing element. If necessary, additional actions, should be taken in a timely manner (e.g., within six months). The degree of additional actions should be in stride with the degree of the gap in production and

affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or something similar would be an appropriate action. If actual production and affordability is near anticipated trends, then measures like outreach and marketing might be more appropriate.

Environmental Constraints: While the element generally describes environmental conditions that exist in the City (e.g., stormwater, earthquakes, flood), it must relate those conditions to the identified sites including any other known conditions or other environmental constraints that could impact housing development on identified sites during the planning period.

Availability of Infrastructure: While the element describes water and sewer infrastructure, it must also demonstrate sufficient existing or planned total water and sewer capacity to accommodate the RHNA.

#### Zoning for a Variety of Housing Types:

- Multifamily Zoning: While the element analyzed most zones discussing allowable uses and development standards, it is relying entirely on sites zoned “PD” yet provides no discussion or analysis of the zoning. The element must discuss and analyze the PD zoning including listing allowable uses (p. 4-4) and applicable development standards and processes.
- Emergency Shelters: The element must describe compliance with Government Code section 65583, subdivision a)(4)(A) or include a program to comply with this requirement. For your information, pursuant to Government Code section 65583, subdivision a)(4)(A), parking requirements should be limited to allowing sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
- Permanent Supportive Housing: Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with these requirements and include programs as appropriate.
- Employee Housing: In addition, the element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. The element must either demonstrate consistency with these requirements or include programs to amend zoning as appropriate. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/farmworkers>.
- Manufactured Housing: The element describes site plan review and design review requirements for mobile homes. According to state law, manufactured homes on a permanent foundation are to be allowed the in the same as single-



family homes. The element must demonstrate compliance with this requirement or add or modify programs.

- An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should evaluate land use controls independently and cumulatively with other land use controls, the analysis should specifically address minimum unit sizes (e.g., 1,000-1800 square feet), lot coverage requirements and height limits. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities and include programs to address identified constraints. Based on a complete analysis, the element should include programs to address or remove the identified constraints.

Local Permit and Processing Procedures: While the element included some discussion of permitting procedures and requirements, it must specifically analyze the use permit and site plan permit requirements. First, the element states that multifamily is allowed by-right; however the element also indicates that multifamily is subject to a development plan permit and site plan review which requires notification requirements to neighbors, public hearings, City Council and Planning Commission review and examining compatibility with surrounding uses – essentially a conditional use or exception process. For your information, subjecting multifamily housing to an exception process is considered a constraint. The analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply (number of units), costs, timing, feasibility and approval certainty. For example, the analysis should consider level of review and actual approval findings. Secondly, the element listed several other permits but should evaluate those processes including the development plan permit, site plan review, and use permit. Lastly, the City requires a use permit for housing for persons with disabilities (e.g., residential care facilities of seven or more). As referenced below, these procedures must be analyzed as potential constraints.

The element also indicates that an affordable housing plan is required to implement the City's inclusionary requirement. It further states that the affordable housing plan including unit mixes and other requirements are subject to City Council discretion. The element must analyze this requirement for any potential constraints on housing supply, cost, feasibility and affordability.

Design Review: The element references a number of specific plans that contain design review standards respective to each Specific Plan Area (SPA). The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria for each SPA, for their impact as potential

constraints on housing supply and affordability. For example, the analysis could describe required findings and discuss whether objective standards and guidelines improve development certainty and mitigate cost impacts. The element must demonstrate this process is not a constraint or it must include a program to address this permitting requirement, as appropriate. In addition, the Housing Crisis Act of 2019 (SB 330, 2019) was signed by Governor Newsom on October 9, 2019 and became effective on January 1, 2020. The Housing Crisis Act (Gov. Code, § 66300), under specified conditions, suspends the use of subjective design standards.

The element should evaluate its design review process for consistency with these requirements and include actions as appropriate. For additional information and sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/processing-permitting-procedures>.

Fees and Exactions: The element indicates that the City imposes either the same fee costs for both multifamily and single-family housing or for certain fees, multifamily fees are more expensive than fees for single family developments. The element should closely evaluate these fees, including disproportionate impacts on housing types such as multifamily and include programs that specifically address and mitigate this constraint. For additional information and a sample analysis and tables, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/fees-and-exactions.shtml>.

Zoning and Fees Transparency: While the element states that the City offers a development handbook to applicants that provides an overview of its development approval process, it must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City's website and add a program to address these requirements, if necessary.

SB 35 Streamlined Ministerial Approval Process: The element must clarify whether there are written procedures for the SB 35 (Chapter 366, Statutes of 2017) Streamlined Ministerial Approval Process and add a program to establish written procedures, if necessary.

Local Ordinances: The element must specifically identify and analyze locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development.

On/Off-Site Improvements: While the element listed the types of improvements required for development, it must identify actual subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width), and analyze their impact as potential constraints on housing supply and affordability. For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/codes-and-enforcement-of-onsite-offsite-improvement-standards>.

## Constraints on Housing for Persons with Disabilities –

- *Residential Care Facilities of Seven or More:* The element indicates that this use is permitted as a commercial use, allowed only with a use permit, requires that these uses are 1,000 feet apart from each other, and must provide parking spaces beyond the required spaces of a typical single-family home. For your information, zoning should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations such as the number of persons, parking requirements, population types and licenses. These housing types should not be excluded from residential zones, most notably low-density zones, which can constrain the availability of housing choices for persons with disabilities. Requiring these housing types to obtain a special use or conditional use permit (CUP) could potentially subject housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element must analyze these standards as potential constraints for housing persons with disabilities and include a program to mitigate or remove constraints. In addition, the element must address how the City permits and allows unlicensed group homes of seven or more.
  - *Definition of Family:* The element stated that the City revised its definition of family; however, the element must specifically describe and evaluate the actual definition for impacts on housing for persons with disabilities.
  - *Reasonable Accommodation:* While the element stated that the City does utilize a reasonable accommodation process, it must include a discussion and analysis of the timing, process, fees, and approval findings for a reasonable accommodation for any potential constraints on persons with disabilities. Based on a complete analysis, the element may need to include a program to mitigate or remove constraints.
4. *Analyze existing assisted housing developments that are eligible to change to nonlow-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element must identify public and private nonprofit corporations (qualified entities) known to have the legal and managerial capacity to acquire and manage at-risk units. For a list of qualified entities, please visit: <https://www.hcd.ca.gov/policy-and-research/preserving-existing-affordable-housing>.

5. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Special Needs Households: While the element includes data and a general discussion of housing challenges faced by special needs households, it still must provide an analysis of the existing needs and resources for each special needs group including

seniors, farmworkers, persons with disabilities, and female-headed households. For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

## **B. Housing Programs**

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

To have beneficial impacts and meet the goals and objectives of the housing element, programs must have specific commitment and discrete timelines (e.g., at least annually or by a specified date). Programs must be revised to address these requirements. Examples include Programs A-1 Code Enforcement, B-1 Accessory Dwelling Units, B-2 Town Center Mixed-Use, B-3 Affordable Housing Development, E-1 Mortgage Programs, H-1 Funding Assistance, and H-2 Reasonable Accommodation, and J-3 Proactive Actions. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/program-overview-and-quantified-objectives>.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

**Shortfall of Sites:** If the element does not identify adequate sites, including available zoning and development standards, to accommodate the RHNA for lower-income households, it must include a program(s) to specifically commit to rezoning sites pursuant to Government Code section, 65583.2, subdivisions (h) and (i). While the

element includes a rezoning program, it does not appear to meet these requirements. For example, the program should:

- Identifying acreage, allowable densities, and anticipated units.
- permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a CUP, planned unit development permit, or other discretionary review or approval.
- accommodate a minimum of 16 units per site;
- require a minimum density of 20 units per acre; and
- at least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites:
  - allow 100 percent residential use, and
  - require residential use occupy 50 percent of the total floor area of a mixed-use project.

For additional information, see the Building Blocks' at <https://www.hcd.ca.gov/identify-adequate-sites>.

City-Owned Sites: The element identified City-Owned sites to accommodate a portion of the RHNA. The element should include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule of actions to facilitate development. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing, financial assistance, completing entitlements and issuing building permits.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

Program to AFFH: While the element includes Programs J-1, J-2, and J-3 to address fair housing issues in Clayton, these programs do not address priorities discussed in the AFFH section and do not appear intended toward a significant beneficial impact during the planning period. For your information pursuant to Government Code section

8899.50 “Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to AFFH extends to all public agency’s activities and programs relating to housing and community development.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a)... (Gov. Code, § 65583, subd. (c)(6).)*

As noted in Finding A4, the element identifies five units at-risk of converting to market-rate uses in the planning period. While Program I-1 (Monitor and Provide Options) will monitor units, the program must also go beyond “considering” amending Chapter 17.92 and extending affordability covenants” and specifically commit to these actions. The element must include a program that addresses preserving at-risk units and specifying actions to monitor at-risk units, including contacting property owners within at least one year of the affordability expiration dates on projects. The program for preserving at-risk units should include noticing requirements within 3 years and 12 and 6 months of the affordability expiration dates, in addition to coordinating with qualified entities such as nonprofit organizations and establish specific time parameters around such actions.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

The element indicated that planning commission review for larger ADUs can be a constraint for the overall development of these units. As such the element stated that it will remove this constraint; however it did not include a program committing to remove this requirement. The element should be revised with an action to remove planning commission review of large ADU types.

Additionally, while Program D-1 (General Plan Amendments) commits to amending the ADU ordinance to comply with state law, the element is required to include a program that actively incentivizes or promotes ADU development for very low-, low-, and moderate-income households. This can take the form of flexible zoning requirements, development standards, or processing and fee incentives that facilitate the creation of ADUs, such as reduced parking requirements, fee waivers and more. Other strategies could include developing information packets to market ADU construction, targeted advertising of ADU development opportunities or establishing an ADU specialist within the planning department.

### **C. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)*

While the element includes quantified objectives for new construction, rehabilitation, and conservation by income group, it could consider quantified objectives for conservation (beyond at-risk preservation). For your information, the quantified objectives do not represent a ceiling, but rather set a target goal for the City to achieve, based on needs, resources, and constraints.

### **D. Public Participation**

*Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)*

While the element includes a general summary of the public participation process, it should also demonstrate diligent efforts were made to involve all economic segments of the community in the development of the housing element. The element could describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element throughout the process. The element should be revised to discuss outreach to lower-income and special needs groups during the public participation efforts, solicitation efforts for survey responses, participation in community workshops, and if translation services were provided. In addition, the element should also summarize the public comments and describe how they were considered and incorporated into the element.